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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LAWRENCE R. LEPIERE, Plaintiff and Appellant, v. CORONADO GARDENS HOMEOWNERS ASSOCIATION, Defendant and Respondent.	E046249 (Super.Ct.No. INC031433) OPINION

APPEAL from the Superior Court of Riverside County. Lillian Y. Lim, Judge. (Retired judge of the San Diego Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Law Offices of Michael Wright, Michael Wright; Boudreau Williams and Jon R. Williams for Plaintiff and Appellant.

Shifflet, Kane & Konoske, Gregory P. Konoske and D. Amy Akiyama for Defendant and Respondent.

1. Introduction

Plaintiff Lawrence R. LePiere (LePiere) sued defendant Coronado Gardens Homeowners Association to compel it to approve his application to install a mobile home on a vacant lot in a mobile home park. A jury found the Association did not "fail to do something that the governing documents [the CC&Rs] required of [it.]"

We reject LaPiere's arguments that substantial evidence does not support the judgment and the jury committed prejudicial misconduct. We affirm the judgment.

2. Facts

The Coronado Gardens mobile home park in Indio is subject to the recorded Declaration of Limitations, Covenants, Conditions, Restrictions, and Reservations (CC&Rs) recorded in 1980. The CC&Rs established the Association's Architectural Review Committee (ARC). The functions of the ARC include the authority to approve any mobile home installed in the park. The ARC was required to give its written approval before the installation of any mobile home more than three years old.

At trial in January 2008, LePiere testified that he bought vacant lot 5 in March 2002. LePiere proposed to relocate a 1974 mobile home on lot 5. He planned to remodel the mobile home extensively. The park manager, Fred Baughn, told him the plan was acceptable.

Initially, LePiere made his purchase of lot 5 subject to approval by the Association of the relocation plan. He delivered his application to Baughn on March 4, 2002, for transmittal to the ARC. The ARC was required to respond within 30 days.

Although the CC&Rs allowed the ARC to exercise its discretion by accepting or rejecting the installation of a mobile home more than three years old, the ARC members were somewhat confused in their understanding on this point. Three of the four ARC members thought they could not approve a mobile home older than three years. But, as a general practice, the Coronado Gardens community did not want to allow older mobile homes. The 1974 mobile home was in extremely poor condition.

On March 12, Baughn sent LePiere a letter, advising him the ARC had rejected his application based on the restriction against mobile homes more than three years old.

Subsequently, LePiere waived the condition for approval by the Association and proceeded to purchase lot 5. On March 29, LePiere wrote a letter to Baughn, urging the ARC to exercise its discretion to approve his project.

Baughn wrote back, referring the matter to a lawyer and asking LePiere to submit a new application. LePiere responded by submitting a duplicate copy of his original application. The ARC reviewed and denied the duplicate application in April.

On May 3, the Association's board of directors met and reviewed LePiere's renewed application and some photographs of the 1974 mobile home in its unrenovated condition. The board adopted a resolution denying LePiere's application. On June 7, LePiere acknowledged the rejection of his application and made a request for mediation pursuant to Civil Code section 1354. On July 6, the Association's lawyer responded, incorrectly asserting that LePiere's request was premature because the ARC had not yet conducted a hearing on the application.

On July 16, LePiere countered that his application had already been formally rejected twice by the ARC—on March 12 and May 3. He demanded his application be approved immediately by July 19. LePiere also protested that he had never received a signed rejection from the ARC, notwithstanding Baughn's rejection letter of March 12.

The Association's expert witness testified the ARC was accorded sole discretion under the CC&Rs to deny approval of a mobile home more than three years old. The Association and the ARC had acted appropriately and in good faith.

LePiere's expert witness agreed that the ARC acted wholly independently and was not subject to the authority of the board. Her opinion was that the board acted inappropriately by trying to influence the ARC. Furthermore, the ARC did not properly exercise its discretion and acted in bad faith in rejecting LePiere's application.

LePiere filed the instant lawsuit in September 2002, suing the Association for injunctive and declaratory relief and damages.

The jury voted 9-3 in favor of the Association.

3. Discussion

At the outset, we note our review has been constrained by a deficiency in the appellate record. At trial and on appeal, LePiere persistently argues that the ARC is separate and discrete from the Association and that the ARC—not the Association or its Board of Directors—failed to discharge its duties by not reviewing LePiere's application properly and by rejecting his application in bad faith. The jury, however, was not asked to render a special verdict concerning the agency of the ARC and its members or the ARC's conduct.

As characterized by LePiere in his opening brief, "[t]he central question to put to the jury at Question No. 3 of the Special Verdict was: 'Did Coronado Gardens Homeowners Association fail to do something that the governing documents required of it?' More simply put, did [the Association] comply with the provisions of the CC&Rs?" The special verdict form is silent about the ARC and does not refer to it at all. The special verdict was not tailored to address LePiere's theory of liability, that being the failure of ARC, as an agent of the Association, to discharge its duties properly.

In oral argument, the parties agreed that there was an agency instruction given to the jury. But the instruction is absent from the appellate record. "Plaintiff 'has the burden of affirmatively showing error by an adequate record.' [Citation.]" (*Fry v. Pro-Line Boats, Inc.* (2008) 163 Cal.App.4th 970, 974.)

Even if the appellate record was complete, however, we would still reject LePiere's arguments about substantial evidence and jury misconduct and uphold the judgment: "We presume the judgment is correct and indulge all intendments and presumptions in its favor where the record is silent. [Citation.]" (*Fry v. Pro-Line Boats, Inc., supra,* 163 Cal.App.4th at p. 974.) The record supplies substantial evidence that the ARC acted within its discretion and in good faith when it reviewed and rejected LePiere's application twice, each time within a 30-day period in March, April, and May 2002. LePiere's exhaustive efforts to characterize the trial evidence in his favor cannot be entertained on appeal. (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.)

Nor is there evidence of juror misconduct. LePiere complains that the jury misinterpreted the CC&Rs, based on one juror's assertion that the ARC "could be

interpreted to allow the [ARC] to reject [LePiere's] application without considering his building plans, as long as the ARC reviewed 'other materials,' such as pictures of [LePiere's] mobilehome." LePiere relies upon two brief paragraphs of a juror declaration, in which he explained the jurors discussed what the ARC could consider in exercising its discretion.

But the foregoing does not rise (or sink) to the level of misconduct. First, evidence about a jury's mental processes, reasons, or subjective considerations is not admissible. (*Continental Dairy Equipment Co. v. Lawrence* (1971) 17 Cal.App.3d 378, 386-387, citing *People v. Hutchinson* (1969) 71 Cal.2d 342, 346-351.) Even if we credited the juror's declaration, we conclude the jury fulfilled its proper role in this instance, which was to decide whether the Association failed to comply with the CC&Rs. The jury found in favor of the Association and substantial evidence supports the verdict.

4. Disposition

We affirm the judgment. The Association as prevailing party shall recover its costs on appeal.

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s/Gaut
J.

We concur:

s/Hollenhorst
Acting P. J.

s/Miller
J.